

SOCO ADVISORY

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Effect of Recent Amendment to 10 U.S.C. 973, Political Activities by Members of the Armed Forces.

- • The National Defense Authorization Act for FY 2004 (Public Law 108-136), § 545, amended 10 U.S.C. § 973 by lifting the prohibition on holding civil office for retired regular officers and reserve officers called or ordered to active duty for a period in excess of 270 days, except when prohibited under State law or if holding the office would interfere with military duties, as determined by the SECDEF. The prohibition on these officers exercising any functions of a civil office in the government of a State (defined as the District of Columbia and a territory, possession, or commonwealth of the United States), or of any political subdivision of a State, while under a call or order to active duty for more than 270 days, remains. Regular officers on the active-duty list are still prohibited from both holding and exercising the functions of a civil office.
- • DoD Directive 1344.10, Political Activities by Members of the Armed Forces on Active Duty, which extends the prohibitions of 10 U.S.C. § 973 to enlisted members, will be revised to reflect the recent statutory change, but the change essentially codifies DoD's current practice of deferring to State law on the issue of whether a civil officeholder called or ordered to active duty for a period greater than 270 days must resign or can take a leave of absence.
- • The following provisions of DoD Directive 1344.10 are expected to remain substantially unchanged:
 - • Subsection E2.1.3, which defines civil office as all nonmilitary offices involving the exercise of the powers or authority of civil government.
 - • Paragraph 4.3.3, which states that the prohibition on holding civil office does not apply to members not on extended active duty (a period greater than 270 days), to all enlisted members holding nonpartisan office such as a notary public, member of a school board, or similar local agency, and to all officers serving as members of independent school boards located exclusively on military installations, as long as the office is held in a private capacity and does not interfere with the performance of military duties.
- • The provisions of DoD Directive 1344.10 that specify when retirement or discharge is not an option for civil officeholders who receive extended active duty

orders and for members on extended active duty who are elected or appointed to a civil office covered by a 10 U.S.C. § 973 prohibition will be revised for clarity, but will not change substantively. The Directive states that retirement or separation is not an option during a period of declared war, a national emergency, or other period when reservists have been called to active duty (subparagraph 4.3.6.7) or when the service member is:

- • Obligated to fulfill an active duty service commitment. Subparagraph 4.3.6.1.
- • Serving or has been issued orders to serve afloat or in an area that is overseas, remote, a combat zone, or a hostile fire pay area. Subparagraph 4.3.6.2.
- • Ordered to remain on active duty while the subject of an investigation or inquiry. Subparagraph 4.3.6.3.
- • Accused of an offense under the UCMJ or serving a sentence or punishment for such offense. Subparagraph 4.3.6.4.
- • Pending administrative separation action or proceedings. Subparagraph 4.3.6.5.
- • Indebted to the United States. Subparagraph 4.3.6.6.
- • In violation of an order or regulation prohibiting such member from assuming or exercising the functions of civil office. Subparagraph 4.3.6.8.
- • When retirement or discharge is not an option, the only options are to refrain from exercising the functions of the civil office while on extended active duty (typically done by taking a leave of absence) or to resign the office. In the case of retired regular members and reserve members, resignation is not required unless mandated by State law or holding the civil office interferes with military duties. The revised Directive will likely designate the level in each Military Department at which the decision to require resignation because of interference with military duties can be made. It is anticipated that the revised Directive will require regular members elected or appointed to a civil office to either decline to accept it or, if it has already been accepted, to resign.

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If you have any questions, please contact the DSCA Office of General Counsel at DSN: 329-3703 or dsca-gc@dsca.mil